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EXAMINER

RAVETTI, DANTE

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/596,568
Filing Date: January 25, 2007
Appellant(s): BRUCHLOS ET AL.

Charles L. Moore, Registration No. 33,742
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12 May 2010 appealing from the Office action mailed 28 October 2009.

(1) Real Party in Interest

A statement identifying, by name, the real party in interest is contained in Appellant's brief.

(2) Related Appeals and Interferences

The Examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

A. Status of All Claims

1. Claims cancelled: 1-20.
2. Claims withdrawn from consideration but not cancelled: 30-34
3. Claims objected to: None
4. Claims allowed or confirmed: None
5. Claims rejected: 21-29 and 35-40.

B. Claims on Appeal

The claims on appeal are: 21-29 and 35-40.

(4) Status of Amendments after Final

The Examiner has no comment on the Appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The Examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be reviewed on Appeal

The Examiner has no comment on the Appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the Examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The Examiner has no comment on the copy of the appealed claims contained in the Appendix to the Appellant's brief.

(8) Evidence Relied Upon

Bunch (US Patent No. 6,795,856; hereinafter Bunch); Coley et al. (U.S. Patent Pub. No. 2001/0011253; hereinafter Coley); DeKoning et al., (US Patent No. 5,761,705); Fujii et al., (US Patent No. 6,119,150).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Objection to Specification

The Examiner makes an objection to the Specification, in that the title is not sufficiently descriptive. A new title is required that is clearly indicative of the invention to

Art Unit: 3685

which the claims are directed. The following title is suggested: "Receiving licensed content based on parameters stored in cache memory."

2. 35 USC §112, 1st Paragraph Rejection

Claims 21 and 35:

Appellant is of the opinion that a person skilled in the art would recognize that "the meter event request in the cache memory or sending the meter event request and an **entire contents content of the cache** memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;" would be "all meter event requests stored in the cache memory" from the context of the claim, as recited. The Examiner respectfully disagrees with the Appellant's contention.

Appellant's Specification recites:

[0039]If in the step 26 the number of meter event requests in said dedicated cache memory equals the defined amount specified by the CFP, **all meter event requests are transferred from said cache memory to the metering service invocator** according to step 28. Finally the content of said cache memory is deleted according to step 30.

[0049]The cache controller 66 receives the generated meter event request from the cache enabler 64. The maximum number of meter event requests which may be stored in the cache memory 70 is defined by the CFP. The cache memory 70 stores temporarily these meter event requests. Preferably, the cache memory 70 is physically a RAM memory area. The CFP monitor 68 supervises the amount of meter event requests which are stored within the cache memory 70 and takes care that the maximum number defined by the CFP will not be exceeded. If the number of the meter event requests in the cache memory 70 equals the defined amount specified by the CFP, the cache controller 66 transfers all meter event requests to the metering service invocator 72 and finally deletes the content of the cache memory 70. **The metering service invocator 72 sends all meter event requests to a metering service which is not necessarily a component of the metering handler 50.**

Appellant's Specification, filed on 6/16/2006, seems to be silent the feature of

"...sending the meter event request and an **entire contents content of the cache** memory to a metering service...." Appellant's Specification states, "...the **content of said cache memory is deleted** according to step 30." The Examiner respectfully

Art Unit: 3685

disagrees with the Appellant and maintains his rejection that Appellant's claim limitation contains subject matter not contained within Appellant's Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 35 contain similar language or like deficiencies as found in claim 21.

3. 35 USC §112, 2nd Paragraph Rejection

Claims 21 and 35:

Claim 21 recites:

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

Appellant is of the opinion that there is no comparison with the requests stored in the cache memory as asserted by the Examiner, only a comparison to a number or amount of meter event request that may be stored in the cache memory. The amount of requests stored can therefore be zero or no requests have been previously stored in the cache memory. Accordingly, Appellant respectfully submits that claim 21 does not omit any essential steps.

The Examiner respectfully disagrees with the Appellant. The Examiner asserts the omitted steps are: storing received meter events (e.g. amount of stored meter event) in cache memory. The Examiner respectfully disagrees with the Appellant and maintains his 35 USC §112, 2nd rejection, in that Appellant's claim limitation is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 contain similar language or like deficiencies as found in claim 21.

4. 35 USC §103 Rejection

Claims 21 and 35:

Appellant is of the opinion that the Examiner's cited prior art of Bunch and Coley alone or in combination, does not teach or render obvious Appellant's limitation of comparing, by the metering handler, and amount of stored meter event requests stored in a cache memory with the at least one parameter. Examiner respectfully disagrees for these features are clearly taught at Bunch (Col. 7, lines 40-51), (Col. 8, lines 1-15; 6-67), (Col. 9, lines 1-10; 23-34) and Coley ([0008]-[0009], [0011]-[0013], [0024]-[0026], [0049], [0051], [0062], [0064], [0068], [0070], [0074], [0081]-[0082], [0096],)

Claim Rejections - 35 USC § 112, 1st Paragraph

Claims 21-29 and 35-40 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As to claim 21, Applicant recites, "the meter event request in the cache memory or sending the meter event request and an entire contents content of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;" however, Applicant Specification recites:

[0039]If in the step 26 the number of meter event requests in said dedicated cache memory equals the defined amount specified by the CFP, all meter event requests are transferred from said cache memory to the metering service invocator according to step 28. Finally the content of said cache memory is deleted according to step 30.

[0049]The cache controller 66 receives the generated meter event request from the cache enabler 64. The maximum number of meter event requests which may be stored in the cache memory 70 is defined by the CFP. The cache memory 70 stores temporarily these meter event requests. Preferably, the cache memory 70 is physically a RAM memory area. The CFP monitor 68 supervises the amount of meter event requests which are stored within the cache memory 70 and takes care that the maximum number defined by the CFP will not be exceeded. If the number of the meter event requests in the cache memory 70 equals the defined amount specified by the CFP, the cache controller 66 transfers all meter event requests to the metering service invocator 72 and finally deletes the content of the cache memory 70. **The metering service invocator 72 sends all meter event requests to a metering service which is not necessarily a component of the metering handler 50.**

Applicant's Specification, filed on 6/16/2006, seems to be silent this feature of "...sending the meter event request and an **entire contents content of the cache memory to a metering service**...." Applicant's Specification states "...the **content of said cache memory** is **deleted** according to step 30." The appropriate correction is required.

Claim 35 contain similar language or like deficiencies as found in claim 21. The appropriate correction is required.

Claims 22-29 and 36-40 are also rejected for being dependent upon rejected claims 21 and 35. The appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 21-29 and 35-40 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps.¹ The

¹ See MPEP § 2172.01;

Art Unit: 3685

omitted steps are: storing received meter events in cache memory; It is unclear to the Examiner how the comparing can be performed with the requests stored in cache memory, without first storing the requests there. The appropriate correction is required.

Claim 35, contains similar language or like deficiencies as found in claim 21. The appropriate correction is required.

Claims 22-29 and 36-40 are also rejected for being dependent upon rejected claims 21 and 35. The appropriate correction is required

Claim Rejections - 35 USC § 103

Claims 21-29 and 35-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bunch (US 6,795,856) ("Bunch") and in view of Coley et al., (US 2001/0011253) ("Coley").

As to claims 21 and 35:

Bunch teaches substantially as claimed:

receiving, by a metering handler, a service request message from a service consumer (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

generating, by the metering handler, a meter event request associated with the service request (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-67), 9Col. 9, lines 22-33), Figures 1-2, 5-6);

evaluating, by the metering handler, a status of at least one parameter (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents of the cache memory to

Art Unit: 3685

a metering service in order to process the meter event requests based on the evaluation and the comparison (Col. 8, lines 1-13);

wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

Bunch does not expressly teach:

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

However, Coley expressly teaches:

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter ([0024]-[0027], [0060], [0064]-[0066], [0074], [0081], [0104]);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bunch to include the features of Coley because they both teach the use of cache to store user information.

As to claims 22 and 36:

Bunch does not expressly teach:

wherein the evaluating the status of the at least one parameter comprises evaluating a status of a Boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory.

However, evaluating the status of a Boolean parameter which indicates if the meter request is allowed to be stored is old and well known in the art.

Art Unit: 3685

As to claims 23 and 37:

Bunch does not expressly teach:

evaluating, by the metering handler, a value of an integer parameter associated with the Boolean parameter; and

comparing, by the metering handler, said value of the integer parameter with the amount of stored meter event requests stored in the cache memory.

However, Bunch does expressly teach:

(36) Also, the timer application 44 processes the URL requests from the hook interface 40. The timer application 44 logs all the URL requests in the temporary history log cache 48 on a time-spent per page basis. By logging all the times that URL requests are made, the system can create a comprehensive representation of a user's Internet activities. (Col. 7, lines 25-30);

(40) 3. The temporary history log cache 48 will contain the sequence of URL, begin time and time spent records in memory on the client module 26. (Col. 7, lines 40-45)

(43) The temporary log cache 48 stores the time stamped URL requests sent from the timer application. Also, the temporary log cache 48 stores the gateway web site. The gateway web site is the web site the user is directed to after authentication. The gateway web site can either be determined by the subscriber (employer) or through commercial arrangements with various companies interested in becoming a point of entry for users. This can be established by creating a brief user profile upon user registration. The user can then be introduced to a number of sites which are of particular interest to their profession or group. This entry point is similar to the home page concept, with the exception that it cannot be changed by the user. (Col. 8, lines 1-15);

(50) Periodically, at step 60, the client monitoring module 26 reconnects to the server web site. Upon reaching preset limits (such as number of records, time elapsed, etc.) or on termination of the browser process, the client component 26 will transmit this cached information to the web site server 30. The latter will store this information in a database under the appropriate user's history log. (Col. 8, lines 55-67);

Therefore, a predictable result of Bunch would have been to evaluate a parameter and

to compare that parameter with an amount stored in cache memory.²

² Ex parte Smith, 83 USPQ2d 1509 (Bd. Pat. App. & Int. 2007); Claims in application for patent on pocket insert for book are obvious in view of combination of two prior art patents, since claims are combinations that merely unite old elements with no change in their respective functions, and which yield predictable results, since neither applicant's specification nor her arguments present any evidence that modifications necessary to effect combinations are uniquely challenging or difficult for person of ordinary skill in art, and since claimed improvement is no more than simple substitution of one known element for another, or mere application of known technique to piece of prior art ready for improvement.

Art Unit: 3685

As to claims 24 and 38:

Bunch expressly teaches:

further comprising sending, by the metering handler, the meter event request to the metering service in order to process the meter event request (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

Bunch does not expressly teach:

deleting, by the metering handler, the entire contents of the cache memory if the actual number of the meter event requests in the cache memory equals or increases the value of the integer parameter

However, deleting the entire contents of cache memory if the actual number of the meter event requests in the cache memory equals or increases the value of the integer parameter is old and well known in the art.

As to claims 25 and 39:

Bunch expressly teaches:

wherein the meter event request is stored in the cache memory when the actual number of the meter event requests in the cache memory is less than said value of the integer parameter (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6);

As to claims 26 and 40:

Bunch discloses as discussed above; however, Bunch does not expressly disclose:

wherein the predefined convention is defined in a license contract which relates to kinds and amount of services between a service provider and the service consumer.

Art Unit: 3685

However, Coley expressly teaches:

wherein the predefined convention is defined in a license contract which relates to kinds and amount of services between a service provider and the service consumer ([0024]-[0027]);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bunch to include the features of Coley because they both teach the use of cache to store user information.

As to claim 27.

Bunch expressly teaches:

wherein a relevant information is separated, by the metering handler, from the service request message after receiving the service request message ((Col. 3, lines 14-35; 40-50), (Col. 4, lines 14-20));

As to claim 28:

Bunch expressly teaches:

wherein the relevant information of the service request message comprises at least one of request data, contract data, license data, the boolean parameter, the integer parameter and the identity of the service consumer ((Col. 3, lines 14-35; 40-50), (Col. 4, lines 14-20));

As to claim 29:

Bunch expressly teaches:

counting, by the metering handler, the services when the associated meter event request is sent to the metering service (Abstract, (Col. 3, lines 14-35; 42-50), (Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6); and

sending, by the metering handler, the actual counting results to at least one of a service provider and the service consumer (Abstract, (Col. 3, lines 14-35; 42-50),

Art Unit: 3685

(Col. 4, lines 20-30; 45-52; 60-67), (Col. 5, lines 9-16; 30-47; 50-67), (Col. 7, lines 1-25), (Col. 8, lines 1-13; 55-66), (Col. 9, lines 22-33), Figures 1-2, 5-6).

(10) Response to Argument

Examiner's Comments/Remarks

As to claim 22, Applicant recites, "...which indicates if the meter event request is allowed..." The MPEP interprets claim limitations that contain "if, may, might, can, when and could" statement(s), as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.³ Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.⁴

Claims 24-25, 29, 35-36 and 38-39 also contains similar language as found in claim 22.

Examiner would also like to point out that **Official Notice** was used in the previous office action mailed on March 27, 2009 to indicate that evaluating the status of the at least one parameter comprises evaluating a status of a Boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory and deleting, by the metering handler, the entire contents of the cache memory. Since Applicant has not attempted to traverse this Official Notice statement, Examiner is taking the common knowledge or well-known statement to be admitted prior art.

³ In re Johnston, 77 USPQ2d 1788 (Fed. Cir. 2006);

⁴ MPEP §2106 IIC;

Examiner would like to point out that the language of claim 1, and in others, describes, “non-functional descriptive material.” For example, as to claim 1, Applicant recites, “...**wherein**⁵ said at least one parameter is associated with the service request and a predefined convention, a....” As to claim 2, Applicant recites, “**wherein**⁶ the evaluating the status of the comparing at least one parameter comprises evaluating a status of a Boolean parameter which indicates if the meter event request is allowed to be stored in the cache memory.” However, this is an example of non-functional descriptive material.⁷

⁵ Wherein --MPEP 2114; In re Swineheart, 169 USPQ 226; In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997); While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone.

⁶ Id.;

⁷ In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II; Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability [T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate;

35 USC §112, 1st rejections of claims 21-29 and 35-40:

As to claim 21, Appellant recites:

receiving, by a metering handler, a service request message from a service consumer;

generating, by the metering handler, a meter event request associated with the service request;

evaluating, by the metering handler, a status of at least one parameter;

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

storing, by the metering handler, the meter event request in the cache memory or sending the meter event request **and an entire contents content of the cache memory** to a metering service in order to process the meter event requests based on the evaluation and the comparison;

wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory.

However, Appellant's Specification seems to be silent Appellant's limitation of "the meter event request in the cache memory or sending the meter event request and an **entire contents content of the cache** memory to a metering service in order to

Art Unit: 3685

process the meter event requests based on the evaluation and the comparison.”

Appellant's Specification recites:

[0039]If in the step 26 the number of meter event requests in said dedicated cache memory equals the defined amount specified by the CFP, **all meter event requests are transferred from said cache memory to the metering service invocator** according to step 28. Finally the content of said cache memory is deleted according to step 30.

[0049]The cache controller 66 receives the generated meter event request from the cache enabler 64. The maximum number of meter event requests which may be stored in the cache memory 70 is defined by the CFP. The cache memory 70 stores temporarily these meter event requests. Preferably, the cache memory 70 is physically a RAM memory area. The CFP monitor 68 supervises the amount of meter event requests which are stored within the cache memory 70 and takes care that the maximum number defined by the CFP will not be exceeded. If the number of the meter event requests in the cache memory 70 equals the defined amount specified by the CFP, the cache controller 66 transfers all meter event requests to the metering service invocator 72 and finally deletes the content of the cache memory 70. **The metering service invocator 72 sends all meter event requests to a metering service which is not necessarily a component of the metering handler 50.**

Appellant's Specification, filed on 6/16/2006, seems to be silent the limitation of

"...sending the meter event request and an **entire contents content of the cache**

memory to a metering service....” Appellant's Specification states, “...the **content of said cache memory** is **deleted** according to step 30.” The Examiner respectfully

disagrees with the Appellant and maintains his rejection that Appellant's claim limitation contains subject matter not contained within Appellant's Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 35 contain similar language or like deficiencies as found in claim 21.

35 USC §112, 2nd rejections of claims 21-29 and 35-40:

As to claim 21, Appellant recites:

receiving, by a metering handler, a service request message from a service consumer;

generating, by the metering handler, a meter event request associated with the service request;

evaluating, by the metering handler, a status of at least one parameter;

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents content of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;

wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory.

Appellant is of the opinion that claim 21 does not omit any essential steps.

Appellant argues that the amount being compared with the at least one parameter is

Art Unit: 3685

merely a quantity or number requests stored. Appellant contends that is not necessary to include the additional step of "receiving" or "maintaining" such "quantity" or "number of requests" in the performance of his method step. However, the Examiner respectfully disagrees with the Appellant. The Examiner contends that these values, "quantity" or "number or requests," even if they are "zero" or "no requests," must be acquired and maintained at some prescribed location, in such a way they can be accessed to perform Appellant's comparison. It is unclear how Appellant's "comparison" can be performed without first establishing the essential step of receiving and storing meter event requests stored in a cache memory. Therefore, the Examiner respectfully disagrees with the Appellant and maintains his rejection.

Claim 35 contain similar language or like deficiencies as found in claim 21.

Art Unit: 3685

35 USC §103 Rejections of claims 21-29 and 35-40:

Appellant is of the opinion that the combined prior art of Bunch and Coley does not anticipate or render obvious Appellant's representative claim 21. The Examiner respectfully disagrees.

receiving, by a metering handler, a service request message from a service consumer;

generating, by the metering handler, a meter event request associated with the service request;

evaluating, by the metering handler, a status of at least one parameter;

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter;

storing, by the metering handler, the meter event request in the cache memory or sending the meter event request and an entire contents content of the cache memory to a metering service in order to process the meter event requests based on the evaluation and the comparison;

wherein said at least one parameter is associated with the service request and a predefined convention, and said at least one parameter defines how many meter event requests may be stored in the cache memory.

Art Unit: 3685

Regarding **comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter**

under the broadest reasonable interpretation the cited prior art of Bunch expressly teaches that begin time and time spent information which is stored in a log cache ((Col. 7, lines 40-51), (Col. 8, lines 1-15; 6-67), (Col. 9, lines 23-34)). These cache values are used to determine a client based log record, for later determining client use.

The cited prior art of Coley teaches "date/time" information (e.g. data stored/saved in cache memory) as a checking mechanism to determine if proper operation of software is being performed ([0074]). The cited prior art of Coley, then teaches the "gathering" of any type of information (e.g. dates/times,) related to "validation" requests to ensure that "periodic" checking, is not interfered with ([0096]). Coley then teaches, that this "periodic checking" is for an license validity. Coley teaches the use of "date/time" information (e.g. cache data) and comparing it with "information" (e.g. one parameter) maintained on the licensing server ([0051]). Additionally, Coley teaches the "comparison" of a "date/time stamp" (e.g. stored meter event request) with a "system date/time" information (e.g. at least one parameter).

Applicant's Specification recites:

Example 1

According to a first example the service consumer 32 needs to allocate server hardware from a service supplier 34 for a one week timeframe, based on a consumptive license contract which sets a limit of maximum five allocations for this contractor. Since this is a high value service request, the service consumer 32 wants to ensure that this boundary, e.g. 5, will not be exceeded. Therefore, he will use a license contract which disables the

Art Unit: 3685

CEP. In this case, the meter event database and subsequently the corresponding service invocation counter of the license validation component will always represent the current status of the service invocation, eliminating the risk to overrun the limits of the license contract. (Page 20; Example 1)

Alternatively, the CEP and the CFP may be provided as one single parameter. This single parameter may be an integer which defines the maximum number of meter event requests in said cache memory. The boolean status FALSE may be represented by the value zero, and the boolean status TRUE by any positive integer value. This single parameter may be also contained in the license contract.

Applicant's Specification teaches the use of "comparing" is just performing a counting function, up to a defined limit. The cited prior art of Coley teaches that a cache component for the storage of license information ([0024]). Additionally, the cited prior art of Coley teaches the use of "fixed" or "floating licenses." Where, the "fixed" license permits an application to run on a defined set of computers, and the "floating license" allows for a varied amount of licenses to operate on any given time ([0011]). Also, the cited prior art of Coley teaches the monitoring of the number of floating licenses to ensure proper use ([0011]). Coley additionally teaches the use of an "authenticator module" to determine if the "maximum" number of "floating licenses" are already in use ([0013]).

Coley then teaches the use of an "audit reports" to manage licensing arrangements to monitor the number of "floating licenses" of a particular application ([0062], [0082]). Additionally, Coley teaches the "decrementing" of a floating license count ([0068]). This function of "decrementing" is a similarly related to function described by the Applicant's limitation. To one of ordinary skill in the art, the cited prior art of Coley discloses Applicant's limitation of

Art Unit: 3685

comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter.

Therefore, the above cited prior art of Bunch and Coley, teaches Appellant's limitation of **comparing, by the metering handler, an amount of stored meter event requests stored in a cache memory with the at least one parameter.** Therefore, the Examiner respectfully disagrees with the Appellant and maintains his rejection.

Conclusion

Appellant's arguments are not persuasive in that they are based on a reading of the prior art that is not supported to the teachings of Bunch and Coley. For the above cited reasons, the Examiner believes that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's Answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Dante Ravetti/
Examiner, Art Unit 3685
Saturday, July 31, 2010

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685

Art Unit: 3685

Conferees:

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